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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1165

WILLIAM J. SCOTT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

WILLIAM A. BARNETT,
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Chicago, Illinois 60603,
726-4480,

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Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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THE UNITED STATES OF AMERICA,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, William J. Scott, prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit entered January 4, 1980.

OPINION BELOW.

The judgment of the United States Court of Appeals for the Seventh Circuit was issued as an unpublished order pursuant to Circuit Rule 35. The order is reproduced in the appendix. (App. A1-A2)

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered January 4, 1980. No petition for rehearing was filed. Jurisdiction is conferred upon this Court by 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Should a United States Attorney whose former law firm, while he was still an active partner, investigated petitioner's campaign fund raising activities and who, at the time he began directing the case against petitioner, was receiving a percentage of the current fees of his former firm, be disqualified?

2. Is a defendant entitled to an evidentiary hearing when his motion to disqualify the prosecutor contains facts creating an appearance of impropriety and the facts are neither denied nor explained by the prosecutor?

STATUTE INVOLVED.

Federal Conflict of Interest Act, 18 U. S. C. § 203(a):

> (a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, as asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—
>
> * * *
>
> (2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia.
>
> in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or
>
> * * *
>
> Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

STATEMENT OF THE CASE.

This is an appeal from the denial of a pretrial motion by petitioner, the elected Attorney General of the State of Illinois, who is currently being tried on five counts of having violated Title 26 USC Section 7206(1). The indictment was returned in April, 1979, and charges that for the years 1972, 1973, 1974 1975 petitioner wilfully and knowingly made and subscribed individual income tax returns which he did not believe to be true and correct as to every material matter contained in them.

On December 12, 1979, by oral order from the bench (App. A4), the District Court denied petitioner's motion to disqualify the prosecutor, Thomas P. Sullivan, United States Attorney. Following an expedited appeal from that order, the Circuit Court, on January 4, 1980 affirmed the order of the District Court.[1] (App. A1-A2) Petitioner's motion to the Circuit Court for a stay was denied on January 4, 1980 (App. A5) and Circuit Justice Stevens denied petitioner's application for stay on January 8, 1980. The trial began in the District Court on January 8, 1980.

In April of 1977, a lawyer associated with the firm of Jenner & Block, at a time when the prosecutor had not assumed the office of United States Attorney and was still an active partner in that firm, conducted an investigation into the political

1. The circuit court's order states that petitioner appealed from the denial of his pre-trial motions to disqualify the prosecutor and to dismiss the indictment because of the presence of an unqualified person before the grand jury. (App. A1) In fact the petitioner's notice of appeal specified the orders "denying his call for an evidentiary hearing and Motion to Disqualify Prosecutor." No appeal has been taken from the denial of the motion to dismiss the indictment because of an unauthorized person in the jury room.

campaign fund-raising activities of the defendant by seeking access to the records maintained by the Illinois State Board of Elections (Memo re: Recently Discovered Evid., filed 10/5/79)

In July of 1977, the prosecutor assumed office. (App. A9) On August 8, 1977, he directed a letter to certain individuals in the Department of Justice which stated in part:

> "By letter dated July 8, 1977, I advised Mr. William B. Gray that I intended to recuse myself in all matters pending in the Office of the United States Attorney for the Northern District of Illinois which involved persons or firms who were clients of mine or of other lawyers at Jenner & Block while I had been with Jenner & Block. Immediately upon my taking office, I did in fact recuse myself in those matters, as well as in any matters involving Jenner & Block for the next year, even though not pending at the time I took office." (Ex. A, Memo. re: Motion is Disqualify, filed 9/6/79)

In October of 1977 the defendant became aware that he was the subject of on ongoing investigation before the Grand Jury and that his campaign and fund-raising records were being sought.

In response to petitioner's pre-trial motions, the government filed its pretrial pleadings on July 23, 1979, which included a copy of the Financial Disclosure Report completed by the prosecutor and dated June 20, 1979, declaring his income in addition to his salary as United States District Attorney. (App. A6-A16) Section IB reports an income of $54,910.00 stated to be a "Distributive share of partnership income", presumably received in 1978. (App. A10) The prosecutor stated that this was received under the Jenner & Block partnership agreement which entitles him to 50% of his share of the partnership profits for the 12 month period commencing with the month following the month he withdrew, determined on the basis of his per-

centage of profits at the time of withdrawal, payable in two yearly and equal installments. (App. A15)

On September 6, 1979 the defendant filed his motion to disqualify the prosecutor accompanied by his request for an evidentiary hearing in order to provide the court with the documents and testimony to support the allegations of the motion seeking the disqualification of the prosecutor.

The prosecutor filed no answer to that motion and, on October 5, 1979, after the petitioner became aware of the Illinois State Board of Elections' Form D-3 filed by Jenner & Block to obtain records of petitioner's fund raising, he sought leave to file this newly discovered evidence in support of his motion to disqualify the prosecutor. The government filed a response on October 19, 1979.

REASONS FOR GRANTING THE WRIT.

I.

THE FACTS CONTAINED IN PETITIONER'S MOTION, WHICH THE PROSECUTOR HAS NOT DENIED OR EXPLAINED, CREATE AN APPEARANCE OF IMPROPRIETY ON THE PART OF THE PROSECUTOR.

As noted in *Berger* v. *United States,* 295 U. S. 78, 88 (1935):

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is a compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Unlike an advocate for a private party, a prosecutor's obligation runs to the people, which includes the accused. Not only must his prosecution be fair, but his decision to prosecute must not be motivated by improper or special interests.

The effectiveness of any free government requires the confidence of its people. Such confidence requires not only that public officials conduct themselves in a proper manner, but also that they avoid even the appearance of impropirety. It is for this reason that Section 1.2 of the ABA Standards for Criminal

Prosecutors provides that a prosecutor should avoid the appearance or reality of a conflict of interest with respect to his official duties. The commentary to this section states in part that "It is of the utmost importance that the prosecutor avoid participation in a case in circumstances where any implication of partiality may cast a shadow over the integrity of his office."

Petitioner presented facts to the District Court which create an appearance of impropriety. The prosecutor came to the office of the United States Attorney from the law firm of Jenner & Block. Several months before the prosecutor took office, an associate of Jenner & Block obtained from the Illinois Board of Elections the records of petitioner's campaign fund raising activities. Within months after he assumed his duties as United States Attorney the prosecutor instituted and presided over a federal investigation of petitioner's same fund raising activities. This enabled the prosecutor to gain access to a wide variety of petitioner's campaign and fund raising records that would not be available to a private law firm.

During this same period of time the prosecutor was entitled to a distributive share of Jenner & Block partnership profits earned during the year immediately following his withdrawal from the firm to become United States Attorney—August, 1977—July, 1978. During that same fiscal year, which was the very period during which he had personally directed the case against petitioner, prosecutor received one-half of his distributive share —$54,910.00.

If the client for whom Jenner & Block in April of 1977 obtained the Illinois Board of Elections' records regarding petitioner was still a client during the fiscal year August 1977 —July, 1978, some of the fees for that fiscal year, of which the prosecutor received a proportionate share, may have been paid by that client.

The prosecutor is aware not only of the need to avoid the

appearance of impropriety, but that these facts, at the very least, create such an appearance. In 1977 he advised the Justice Department that he would recuse himself from all matters pending when he took office or commenced during the next year which involved clients of his or other lawyers at Jenner & Block.

Prosecutor's fee arrangement places him in violation of 18 U. S. C. § 203 which prohibits a United States Attorney from directly or indirectly receiving compensation for services rendered by himself or another in relation to any proceedings in which the United States is a party or has a direct and substantial interest. Section 203 is absolute on its face. It precludes even compensation for services performed by another person. The gravaman of section 202 is not intent, but the acceptance of the authorized compensation. Perkins, *The Federal conflict of Interest Law,* 76 Harv. L. Rev. 1116, 1161-1162; *United States* v. *Podell,* 419 F. 2d 144, 150 (2nd Cir. 1975), *cert. denied* 423 U. S. 926; *United States* v. *Evans,* 572 F. 2d 455, 481 (5th Cir. 1978). By virtue of the size of the prosecutor's former law firm and the nature of its practice the above facts create a *prima facie* showing that the prosecutor was in violation of Section 203.

The prosecutor's arrangement with Jenner & Block also falls within prohibitions long imposed by the Canons of Ethics.

Disciplinary Rule 2-107 of the American Bar Association's Code of Professional Conduct states:

> DR2-107 Division of Fees Among Lawyers
>
> (A) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:
>
> (1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

(2) The divsion is made in proportion to the services performed and responsibilities assumed by each.

(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) This Disciplinary Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

Prosecutor's assertions that his arrangement with Jenner & Block is a "separation agreement," "profit sharing agreement," or a "severance agreement" and, therefore within the exception in subparagraph (B) of DR 2-107 are not well founded. The arrangement, as described by the prosecutor himself in his financial disclosure report, provided that he was to share in partnership profits for a 12 month period commencing with the month he withdrew to become U. S. Attorney. He was thus receiving a portion of the fees earned by Jenner & Block during the first year in which he was United States Attorney. If a separation agreement was intended, it would have been a simple matter to use the firm's profits for the year preceding the prosecutor's withdrawal for the purpose of measuring his payment. Instead the parties chose to make the prosecutor a participant in the firm's current income. The prosecutor received money for work performed for private parties during the very period in which he was required to have sole and undivided loyalties to a single client—the United States.

Opinion No. 645 of the Illinois Bar Association Committee on Professional Ethics construes DR2-107(a) of the Illinois Code of Professional Responsibility, a provision that tracks the language of A. B. A. DR-2-107. An attorney who became mayor of a municipality asked if he could accept a share of partnership fees either for work being done by the firm at the

time he assumed office or thereafter. The Opinion, relying on both the Illinois and A. B. A. Codes, held that "a sharing of fees by the lawyer-mayor would be improper both as to the business of the firm at the time of his election and as to business originating after the election if he does not work in connection with the law practice." Even though the lawyer-mayor had continued in partnership with his former firm, the Opinion held that it was improper for him to share in fees if he did not work in connection the the law practice. (Opinion No. 645, Illinois State Bar Association, Committee of Professional Ethics.)

In the present case, the prosecutor was either being paid for work he performed for private clients while United States Attorney or was receiving part of the fees paid to Jenner & Block by private clients when he did not perform any of the services rendered for those clients. If the former is true he was not devoting full time to his duties as United States Attorney. If the latter is true he was receiving a division of fees in violation of DR 2-107. No matter which is true, he was in violation of 18 USC 203.

It is not mere supposition that the prosecutor's former law firm, Jenner & Block, represents clients whose interests are in conflict with the interest represented by the petitioner individually and in his capacity as Attorney General of the State of Illinois. While still in private practice, the prosecutor sought to recover damages in excess of $11,000,000.00 against petitioner in his individual capacity. *Holiday Magic, Inc.* v. *William J. Scott,* 72 Ill. 2d 131 (1975). The prosecutor also represented Daniel Walker, former governor of Illinois, in a suit defended by the petitioner. *Walker* v. *State Board of Elections,* 65 Ill. 2d 543 (1976).

Other instances of litigation in which Jenner & Block and the petitioner have been adversaries include *Finish Line Express*

v. *City of Chicago*, 72 Ill. 2d 131 (1978); ***People ex rel. Wilcox*** v. *Equity Funding Life Insurance Co.*, 61 Ill. 2d 303 (1976); *State of Illinois* v. *Ampress Brick Co., Inc.*, 67 F. R. D. 461 (1975); *State of Illinois* v. *Ampress Brick Co., Inc.*, 536 F. 2d 1163 (7th Cir. 1976); *Illinois Brick Co.* v. *State of Illinois*, 431 U. S. 720 (1977); *State of Illinois* v. *E. T. Simonds Construction Co., et al.* (C. D. Ill., No. S CIV 75 0016); *State of Illinois* v. *W. J. Sheppard & Co., et al.* (C. D. Ill., No. S CIV 76 0018); *State of Illinois* v. *Brighton Building & Maintenance Co.* (N. D. Ill. No. 77 C 4541); *State of Illinois* v. *General Paving Co. and E. F. Mengel Co.*, 590 F. 2d 680 (7th Cir. 1979), *cert. pending*, U. S. S. Ct. No. 78-1464.

The above facts, presented to the Court in petitioner's motion to disqualify the prosecutor create, at the very least, the appearance of impropriety on the part of the prosecutor.

II.

THE PRESENTATION OF FACTS CREATING AN APPEARANCE OF IMPROPRIETY REBUT ANY PRESUMPTION OF PROPRIETY ENJOYED BY THE PROSECUTOR AND REQUIRE AN EVIDENTIARY HEARING.

In ruling orally from the bench on petitioner's motion to disqualify the prosecutor, the District Court said that he found "no reason under the statute, the regulations of the Department of Justice, or the Canons of Professional Responsibility for the United States Attorney to disqualify himself from this case" and denied the motion to disqualify and the motion to conduct a hearing on the matter. (App. A4) The court did so in the face of allegations creating a *prima facie* showing of impropriety and despite the failure of the prosecutor to deny or, more important, to explain any of the allegations. The Fifth Circuit has recently

held that allegations creating a *prima facia* showing of impropriety which are not denied by the government entitle the defendant to an evidentiary hearing. *In re Grand Jury Investigation, Lance* v. *United States*, 5th Cir. Docket No. 79-1978, opin. filed January 8, 1980.

The agreement under which the prosecutor was paid a portion of Jenner & Block's fees for the first year of prosecutor's term as United States Attorney was not produced for analysis. Nor was the Court advised of the nature and duration of Jenner & Block's representation of the client on whose behalf they sought records relating to petitioner's campaign fund raising efforts.

In the absence of sworn denial or explanation, the court's ruling can only be explained on the basis of engaging in a presumption of propriety on the part of the prosecutor. Indeed, by speaking in terms of the prosecutor disqualifying himself from the case, the court not only invoked a presumption of propriety but established a subjectve standard to be measured by the prosecutor himself.

The common theme which runs throughout the various codes of ethics and statutes on conflicts of interest is the avoidance of even an appearance of impropriety. Only by maintaining such a high standard of conduct can the essential public confidence in the judicial process be maintained. The Federal Conflict of Interest Act (18 U. S. C. §§ 201-218) establishes an objective standard of conduct. Corrupt intent or loss by the government are not elements necessary to prove a violation of the Act. See *United States* v. *Mississippi Valley Generating Co.*, 364 U. S. 520, 549-550, 5 L. Ed. 2d 268, 81 S. Ct. 294 (1961), which involved the predecessor Act.

If the appearance of impropriety is to be avoided, the presumption of propriety cannot persist in the face of allegations

which create an appearance of impropriety. Any presumption of propriety must be rebutted by facts creating a contrary appearance. Any other result will simply exacerbate the prevailing public opinion that the law is a collection of technicalities manipulated by lawyers and judges for their own benefit at the expense of the interest of the public.

If our goal is to avoid even the appearance of impropriety, then allegations which create such an appearance must be investigated so that the reality can be ascertained. A trial that proceeds under the cloud of such an appearance defeats the purpose of codes of ethics and statutes dealing with conflicts of interest.

In this case, it would have been a simple matter to remove the cloud. The court had only to ask for the agreement providing that the prosecutor participate in the fees of Jenner & Block and for the identity and nature of the representation of the client for whom Jenner & Block obtained petitioner's campaign fund raising records. These two inquiries would have determined whether a further hearing was necessary and the extent of any such hearing.

The facts of this case demonstrate that persisting in the presumption of propriety even after the presentation of facts creating an appearance of impropriety reduces our self-serving pronouncements of the integrity and impartiality of the judicial process to a mere public relations ploy in the eyes of the public. Petitioner has presented all of the facts which are available to him. Further resolution of the very real issue these facts raise requires documents and information in the sole possession of the prosecutor and Jenner & Block. Without an evidentiary hearing, the appearance of impropriety will persist despite the lofty standards to which our profession and the government give lip service.

CONCLUSION.

For the foregoing reasons, a writ of certiorari should be issued to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

WILLIAM A. BARNETT,
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630-4400,

Counsel for Petitioner, William J. Scott.

APPENDIX.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 3, 1980
Decided January 4, 1980.

Before

Hon. Robert A. Sprecher, Circuit Judge
Hon. William J. Bauer, Circuit Judge
Hon. Richard D. Cudahy, Circuit Judge

United States of America,
Plaintiff-Appellee,
No. 79-2534 *vs.*
Wiliam J. Scott,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 79-CR-236

John Powers Crowley,
Judge.

ORDER

Defendant-appellant, William J. Scott, appeals from a final order of the district court which denied his pre-trial motions to disqualify the United States Attorney and to dismiss the indictment because of the presence of an unauthorized person, the United States Attorney, before the grand jury. Both motion are based on a claim that the United States Attorney had a conflict

of interest which prevented him from participating in any proceeding in the case. We reject the argument of the appellant and affirm the judgment of the district court.[1]

The appellant essentially raises two separate grounds in claiming the existence of a conflict of interest. First, the appellant contends that the United States Attorney, in his previous employment in a law firm, frequently was counsel in cases in which the appellant, in his capacity as Illinois Attorney General, was either opposing counsel or an opposing party. We find this contention without merit. The mere fact that the United States Attorney may have represented opposing parties in litigation does not create a conflict of interest.

Second, the appellant contends that the receipt of payments by the United States Attorney through a severance agreement with his former law firm violates various federal conflict of interest statutes, 18 U. S. C. §§ 201-09, thus creating a conflict of interest and requiring disqualification. We reject this contention. We find nothing in the arrangement between the United States Attorney and his former law firm which under the federal statutes or regulations, would required disqualification or have made him an unauthorized person before the grand jury.

Thus, neither of these two grounds, nor any other of the appellant's allegations of conflict of interest, requires disqualification or dismissal of the indictment.[2]

The judgment of the district court is affirmed.

1. The Government's emergency motion requested that, pursuant to Circuit Rule 15 the case be affirmed without oral argument. The motion is granted and the judgment is affirmed without oral argument.

2. Nor was it error for the district court to deny the appellant's motion to hold an evidentiary hearing on these claims.

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

United States of America,
Plaintiff,
vs.
William J. Scott,
Defendant.
No. 79 CR 236

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John Powers Crowley, one of the Judges of said Court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Wednesday, December 12, 1979, at 2:00 p.m.

Present:

Hon. Thomas P. Sullivan,
United States Attorney,
and
Mr. Jeremy D. Margolis and
Mr. Scott Turow,
Assistant U. S. Attorneys,
on behalf of the Government;
Mr. William Barnett
Mr. Gerald C. Risner
Mr. David G. Lichenstein,
on behalf of the Defendant.

* * * * *

[19] There was also a motion to—motions that dovetail with each other—to move to dismiss the indictment because of the presence of an unauthorized person before the Grand Jury, i.e., the United States Attorney in this case, and a motion to disqualify the United States Attorney—and when I use the phrase "the United States Attorney," I'm speaking of the United States attorney as an individual rather than the office of the United States Attorney.

I have read extensive memoranda and exhibits that have been submitted with those memoranda.

[20] Suffice it to say that I can find no reason under the statute, the regulations of the Department of Justice, or the Canons of Professional Responsibility for the United States Attorney to disqualify himself from this case.

Therefore, since there was no reason for him to disqualify himself from participation in this case, he was not an unauthorized person before the Grand Jury, and the motion to dismiss is denied.

Based upon my rulings on the motions to dismiss, the motion to dismiss the indictment because of the totality of the prosecutorial abuse is also denied, and the motion to conduct a hearing on these matters is denied.

* * * * *

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

January 4, 1980.

Hon. Walter J. Cummings, *Circuit Judge*
Hon. Robert A. Sprecher, *Circuit Judge*
Hon. William J. Bauer, *Circuit Judge*

United States of America,
Plaintiff-Appellee,

No. 79-2534 *vs.*

William J. Scott,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 79-CR-236

John Powers Crowley, Judge

This matter comes before the court for its consideration of the following documents:

1) The "MOTION TO STAY MANDATE AND ENTRY OF AN ORDER STAYING DISTRICT COURT PROCEEDINGS PENDING APPELLATE COURT REVIEW OF ORDER DENYING DEFENDANT'S MOTION TO DISQUALIFY PROSECUTOR" filed herein on January 7, 1980 by counsel for the defendant-appellant.

2) The "GOVERNMENT RESPONSE TO DEFENDANT'S MOTION TO STAY MANDATE, ETC." filed herein on January 7, 1980.

On consideration thereof,

It Is Ordered that said motion be, and the same is hereby, DENIED. The mandate of this court shall issue forthwith.

UNITED STATES DEPARTMENT OF JUSTICE

United States Attorney
Northern District of Illinois
United States Courthouse
Chicago, Illinois 60604

Received July 23, 1979

July 23, 1979

Mr. William A. Barnett
135 South LaSalle Street
Room 808
Chicago, Illinois 60603

Re: 79 CR 236
William J. Scott

Dear Mr. Barnett:

Your pre-trial motions seek access to the publically filed Financial Disclosure Report filed by United States Attorney Thomas P. Sullivan pursuant to the Ethics in Government Act of 1978. We view the showing made in those motions as inadequate to trigger a factual response.

Inasmuch as the Report is available to any interested citizen, however, we have appended to our responses those portions of the Report which make reference to the subject matter of your motions. We enclose for your information a photocopy of the complete Report.

Very truly yours,

Thomas P. Sullivan
United States Attorney
By /s/ Jeremy D. Margolis
Jeremy D. Margolis,
Deputy Chief
Special Prosecutions Division

Enclosure

INFORMATION SHEET
Financial Disclosure Report for Executive Branch Personnel

The Ethics in Government Act of 1978
(Public Law 95-521, October 26, 1978)

STANDARD FORM 278 For use by Officers and Employees filing annual and termination of employment reports.

Who Must File: The following officers and employees, if they have served 61 days or more during the preceding calendar year:

—The President;
—The Vice President;
—Officers and employees (including special government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to or greater than the rate for GS-16 (step 1);
—Members of the uniformed services whose pay grade is 0-7 or above;
—Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16;
—Administrative law judges;
—Employees in the excepted service in positions which are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics;
—The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the U.S. Postal Service whose basic rate of pay is equal to or greater than the minimum rate of basic pay fixed for GS-16; and
—The Director of the Office of Government Ethics and each designated agency ethics official.

When to File: No later than May 15 annually. In the event an individual terminates employment, and does not accept another position listed above, the report must be filed no later than the 30th day after termination, covering:

a. the preceding calendar year if the annual May 15 report has not been filed, and
b. the portion of the present calendar year up to the date of termination.

Where to File: With the designated ethics agency official at the agency in which the individual is employed, except that the President and the Vice President shall file their reports with the Director of the Office of Government Ethics and members of the uniformed services shall file their reports with the Service Secretary concerned. Note: A copy of the report filed by each individual specified below shall be transmitted to the Office of Government Ethics by the agency receiving the report: (a) designated agency ethics officials; (b) nominees to and holders of positions which require confirmation by the Senate or both Houses of Congress (other than members of the uniformed services); and (c) the Postmaster and Deputy Postmaster General, and the Governors of the Board of Governors of the U.S. Postal Service.

Definitions: The terms employed in the financial disclosure report are defined as follows:

1. **Income**—All income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (see "Business Income" below); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive s of partnership income; and income from an interest in an estate or trust;
2. **Gift**—Anything of value, including a payment, advance, forbearance, or deposit of money, unless consideration of at least equal value is given to the donor, but not including:
   a. bequest or other form of inheritance;
   b. suitable mementos of a function honoring the reporting individual;
   c. food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government;
   d. food and beverages consumed at banquets, receptions, or similar events; or
   e. communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals;
3. **Personal hospitality of any individual**—Hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family, or on property or facilities owned by that individual or his family;
4. **Reimbursement**—Any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are:
   a. provided by the United States Government;
   b. required to be reported by the reporting individual under section 7342 of Title 5, United States Code (pertaining to receipt and disposition of foreign gifts and decorations);
   c. required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);
5. **Dependent Child**—Any individual who is a son, daughter, stepson, or stepdaughter and who:
   a. is unmarried and under age 21 and is living in the household of the reporting individual; or
   b. is a dependent child of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1954. If a reporting individual is permitted to take a tax deduction for a child under the provisions of section 152, that individual is a "dependent" and his or her financial interests must be disclosed.
6. **Relative**—An individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, step-

daughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and, for this report, the fiance(e) of the reporting individual;

7. **Secretary concerned**—The meaning set forth in section 101(8) of Title 10, United States Code, and:
   a. the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and
   b. the Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service;
8. **Designated agency ethics official**—An officer or employee who is designated by an agency to administer the provisions of the Act.

Method of Valuation: Give the current market value, if reasonably available. Otherwise give fair value as determined in good faith, or using:

1. the purchase price and purchase date of real property;
2. the book value of a corporation whose stock is not publicly traded;
3. the net worth of a business partnership;
4. the equity value of an individually owned business;
5. for other holdings, any recognized indication of value; or
6. the assessed value of an item for tax purposes adjusted to reflect its market value if the assessed value is computed at less than 100 percent of such market value.

If 5 or 6 is utilized, give a full description of the method used in determining value. Personal indebtedness with respect to an asset should be disclosed separately as a liability and not deducted from the value of the property. An appraisal of property is not necessary, but may be used.

Trusts: (A) *In general.* Report the assets and income of a trust as if the assets were held directly. It is not necessary to list the settlor or other beneficiaries.
Report trust assets by listing either: (a) each trust asset valued in excess of $1,000 and its category of value, and stating the percentage of the total interest in the trust held by the individual (plus spouse and dependents); or (b) each asset as to which the value of the individual's interest (plus that of spouse and dependents) is in excess of $1,000. In the latter case, for example, an individual with a one-fifth interest would report each asset valued in excess of $5,000 (since the value of one-fifth interest would be in excess of $1,000) and a category of value that reflects such interest.
(B) *Excepted trusts.* Report the category of value of the total income from—but *not* the separate assets or items of interest from—the following:

1. A trust not created by the reporting individual, spouse, or dependent child, and where none of these individuals knows the holdings or sources of income of the trust. (Section 202(f)(2) of the Act.)
2. A "qualified blind trust", approved in advance by the Director of the Office of Government Ethics and qualified under Section 202(f)(3) of the Act. In general, such a trust must: (a) have as trustee an independent financial institution, lawyer, accountant, or broker; (b) be free of restrictions on the disposition of assets; and (c) be based on an instrument which restricts certain communications from the trustee to preclude disclosure of assets.
3. A specially restricted blind trust for an individual (or the spouse or dependent child of such person) nominated or appointed by the President to an office requiring the advice and consent of the Senate, if the Director of the Office of Government Ethics and the Attorney General determine in advance that the trust meets the rquirements of Section 202(f)(4)(B) of the Act. A nominee intending to create this type of trust must notify the congressional committee considering his or her nomination at the time the financial report is filed.

For further information on the formation and specific characteristics of excepted trusts, obtain copies of Section 202(f) of the Act from a designated agency ethics official or the Office of Government Ethics.

Spouse and Dependent Child Disclosure: A reporting individual is required to provide information concerning his or her spouse and dependent children. Reporting is not, however, required to the extent described below:

1. No reporting is required of an *interest in property or a liability:* (a) which is t sole interest or responsibility of the spouse or dependent child, and the reporting individual has no detailed knowledge of it; (b) which was not in any way derived from the income, assets or activities of the reporting individual; *and* (c) from which the reporting individual neither derives or expects to derive ar financial or economic benefit. (A reporting individual would derive benef. for example, if income from the item was used for family vacations, the education of dependents, or the maintenance of a family home, or if there is an imminent likelihood of inheritance by the reporting individual.)
2. No reporting is required with respect to a *spouse living separate* and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation; or with respect to any income or obligations arising from the dissolution of a marriage or permanent separation from a spouse.
3. No report need be made of a *gift* which is received by a spouse if the receipt was totally independent of the spouse's relationship to the reporting individual. If it was not independent, it must be reported to the same extent and in the same manner as if it had been received by the reporting individual. Do not report gifts received by a dependent child.
4. No report need be made of a *reimbursement,* the receipt of which is totally independent of the spouse's relationship to the reporting individual. Otherwise give the identity, source and brief description of the reimbursement.
5. With respect to *earned income of a spouse,* only the source need be provided as indicated in Section 1(B) of the form. Do not report the income of a deper ent child.
6. It is *not necessary to identify* reported interests as belonging to a spouse or dependent child, except for income earned by the spouse. Items may be designated with an "S" or "D", if desired.

Business Income: Report the "gross income" of a trade or business as define section 61 of the Internal Revenue Code. You should also show the net income such business.
If the interest in a business is passive, such as a limited partnership involving no managerial responsibility, and if the interest is one of several offered on substantially similar terms to a number of participants, the business interest should be reported under Section III, and any income from it should be reported under Section I(B). In such a case, gross business income need not be reported.

Where to Secure Assistance: Assistance may be obtained from a designated agency ethics official or the Office of Government Ethics.

Form Approved:
OMB No. 50-R0613

FINANCIAL DISCLOSURE REPORT

NAME

A9

Agency Use Only

PRIVACY ACT STATEMENT

The Ethics in Government Act of 1978, Public Law 95-521, requires the reporting of this information. This information will be reviewed by Government officials to determine compliance with the intent of the Act and may be disclosed upon request to any requesting person pursuant to Section 205 of the Act or as otherwise authorized by law. Knowing or willful failure to file or report information required to be reported by Section 202 of the Act may subject you to a civil penalty of not more than $5,000 and to disciplinary action by your employing agency or other appropriate authority. Knowing and willful falsification of information required to be filed by Section 202 of the Act may also subject you to criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000 or imprisonment for not more than five years or both.

Instructions: Read the information sheet first, then complete this financial disclosure report. Attach additional sheets if needed; identify each sheet by showing your name, position, and the section being continued.

Reporting period: The period covered by this report is the preceding calendar year unless otherwise indicated in the instructions below. Individuals filing because of termination of employment must include information for the preceding calendar year, unless already reported, and the current calendar year up to the date of termination.

A. Name	B. Position for which filing	C. Department or agency, if applicable	D. Date of appointment to present position
Thomas P. Sullivan	United States Attorney Northern District of Illinois	Department of Justice	July 19, 1977

E. Positions held during the preceding calendar year (if different from present position)	F. Dates of employment in position(s)	G. Termination date (if applicable)
1-1-77 to 7-18-77: Partner, Jenner & Block, Chicago, Illinois	July 19, 1977	

SECTION I. INCOME

A. List each source of gross income from which dividends, rent, interest or capital gains exceeded $100 in amount or value. If none so state. **You may exclude capital gains from the sale or exchange of the personal residence of you, your spouse, or dependent child.**

SPOUSE AND DEPENDENT CHILDREN: Report each source of income of the kind and amount described above which is received by a spouse or dependent child and is derived from an asset required to be reported in Section III.

TRUSTS: See the information sheet, p.2.

Source of Income (Name and Address) (When identifying securities give name of issuing company; if not listed on stock exchange, give address and nature of business)	Type of Income (✓)					Category of Amount or Value (✓)						
	Dividends	Rent	Interest	Capital Gains	Excepted Trust	$101 to $1,000	$1,001 to $2,500	$2,501 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	Over $100,000
Bell Federal Savings & Loan Assn.,Chicago,IL			✓					✓				
Conn. Mutual Life Ins.Co., Hartford, Conn.			✓			✓						
First Federal of Chicago, Chicago, IL (wife)			✓			✓						
AT&T (wife)	✓					✓						
IBM (wife)	✓					✓						
IBM	✓						✓					
Stein Roe & Farnham Stock Fund, Inc.	✓						✓					
The Reserve Fund	✓					✓						

B. List any other income, including honoraria, not reported in Section I(A) which from any source exceeded $100 in amount or value. If none, so state. Report business income as indicated in the information sheet, p. 2.

SPOUSE: Report the source (not the amount) of earned income received by a spouse which exceeded $1,000. If a spouse is self-employed in a business or profession, report only the nature of the business or profession, e.g., law firm or real estate. Designate those items of earned income received by a spouse with an (S). You may exclude your income from current employment by the United States Government; state "Government income excluded".

Source of Income (Name and Address)	Amount	Type (—) (e.g. compensation for services, annuities, distributive shares of partnership income)	Date (Only if Honoraria)
Government income excluded			
Jenner & Block, One IBM Plaza, Chicago, Illinois	54,910	Distributive share of partnership income	

SECTION II. GIFTS and REIMBURSEMENTS

List gifts and reimbursements, in the appropriate category below, and the source. Distinguish between gifts and reimbursements. If none, so state.

SPOUSE AND DEPENDENT CHILDREN: See the information sheet, p. 2.

EXCLUSIONS: Do not include gifts (1) of $35 or less in value; (2) from a relative; (3) of personal hospitality; or (4) which total less than the amount specified in each section.

A. Lodging, Transportation, Food, and Entertainment—Which from each source listed totals $250.00 or more in value.

Source (Name and Address)	Brief Description	Approximate value, if known

B. All Other Gifts—Which from each source listed totals $100.00 or more in value.

Source (Name and Address)	Brief Description	Value

C. Reimbursements—Which from each source listed totals $250.00 or more in amount or value.

Source (Name and Address)	Brief Description	Approximate value, if known

SECTION III. PROPERTY INTERESTS AND ASSETS (REAL AND PERSONAL)

List each interest in real or personal property held in a trade or business, for investment, or the production of income which had a fair market value in excess of $1,000 as of the close of the preceding calendar year. Give the fair market value, or a good faith estimate of value as described in the attached information sheet. (If you use the tax assessment method or the price and date of purchase of real property, report actual amounts.) For all other methods report the category of value. If none, so state.

SPOUSE AND DEPENDENT CHILDREN: Report all property interests of a spouse or dependent child. (See the information sheet for exemptions.)

EXCLUSIONS: (1) A personal liability owed to you by a relative; (2) Deposits in personal savings accounts if the total of all accounts is less than $5,000. (If the total amount exceeds $5,000, report all accounts. A personal savings account includes certificates of deposit or any other form of deposit in a bank or any similar institution.); and (3) Personal property not held for business, investment or the production of income. (Examples include household goods, non-interest bearing checking accounts, automobiles, paintings, jewelry, and life insurance policies. However, if an individual is in the business of buying and selling any such items for profit, their category of value must be disclosed.)

Identification of Property (Name and Address) (When identifying real property, describe improvements on land, e.g., ten-story apartment building; when identifying securities, give name of issuing company; if not listed on stock exchange, give address and nature of business)	Valuation Method	Category of Amount or Value (✓)					
		$1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
(1) House and lot, 148 Tudor Place, Kenilworth, IL	Estimate, net of mortgage					✓	
(2) Bell Federal Savings & Loan Assn., Chicago, IL	Passbook				✓		
(3) 1st Federal Savings & Loan Assn. of Wilmette, IL (wife as trustee for children)	"	✓					
(4) Bell Federal Savings & Loan Assn., Chicago, IL (wife)	"	✓					
(5) 1st Federal Savings & Loan Assn. of Chicago, IL (wife and her mother)	"		✓				
(6) Bell Federal Savings & Loan Assn., Chicago, IL (Thomas P. Sullivan and children)	"			✓			
(7) Vacant land, 5 Thayer Road, Colorado Springs, Colo.	Estimate			✓			

SECTION IV. LIABILITIES

List the total liabilities owed to any creditor which exceeded $10,000 at any time during the preceding calendar year. If none, so state. Report only those revolving charge accounts with an outstanding liability exceeding $10,000 as of the close of the preceding calendar year.

SPOUSE AND DEPENDENT CHILDREN: Report liabilities of a spouse and dependent child. (See the information sheet for exemptions.)

EXCLUSIONS: (1) Liabilities owed a relative; (2) A mortgage on the personal residence of you or your spouse; and (3) A loan which is secured by and does not exceed the purchase price of a personal motor vehicle household furniture or appliance.

Name and Address of Creditor	Type of Liability (e.g. promissory note, margin account) Give interest rate and, if applicable, term.	Category of Amount or Value (✓)				
		$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	over $250,000
None						

SECTION III. PROPERTY INTERESTS AND ASSETS (REAL AND PERSONAL)

List each interest in real or personal property held in a trade or business, for investment, or the production of income which had a fair market value in excess of $1,000 as of the close of the preceding calendar year. Give the fair market value, or a good faith estimate of value as described in the attached information sheet. (If you use the tax assessment method or the price and date of purchase of real property, report actual amounts.) For all other methods report the category of value. If none, so state.

SPOUSE AND DEPENDENT CHILDREN: Report all property interests of a spouse or dependent child. (See the information sheet for exemptions.)

EXCLUSIONS: (1) A personal liability owed to you by a relative; (2) Deposits in personal savings accounts if the total of all accounts is less than $5,000. (If the total amount exceeds $5,000, report all accounts. A personal savings account includes certificates of deposit or any other form of deposit in a bank or any similar institution.); and (3) Personal property not held for business, investment or the production of income. (Examples include household goods, non-interest bearing checking accounts, automobiles, paintings, jewelry, and life insurance policies. However, if an individual is in the business of buying and selling any such items for profit, their category of value must be disclosed.)

Identification of Property (Name and Address) (When identifying real property, describe improvements on land, e.g., ten-story apartment building; when identifying securities, give name of issuing company; if not listed on stock exchange, give address and nature of business)	Valuation Method	Category of Amount or Value (✓) $1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
(8) IBM stock (Thomas P. Sullivan)	Market 6-20-79			(	✓		
(9) IBM stock (wife)	" "		✓				
(10) AT&T stock (wife)	" "	✓					
(11) Stein Roe & Farnham Stock Fund, Inc. (TPS)	" "			✓			
(12) Stein Roe & Farnham Stock Fund, Inc. (wife)	" "		✓				
(13) Stein Roe & Farnham Stock Fund, Inc. (children)	" "			✓			
(14) Refund due from IRS and Illinois Dept. of Revenue for overpayment of 1978 income tax	Estimate		✓				

SECTION IV. LIABILITIES

List the total liabilities owed to any creditor which exceeded $10,000 at any time during the preceding calendar year. If none, so state. Report only those revolving charge accounts with an outstanding liability exceeding $10,000 as of the close of the preceding calendar year.

SPOUSE AND DEPENDENT CHILDREN: Report liabilities of a spouse and dependent child. (See the information sheet for exemptions.)

EXCLUSIONS: (1) Liabilities owed a relative; (2) A mortgage on the personal residence of you or your spouse; and (3) A loan which is secured by and does not exceed the purchase price of a personal motor vehicle, household furniture or appliance.

Name and Address of Creditor	Type of Liability (e.g. promissory note, margin account) Give interest rate and, if applicable, term.	Category of Amount or Value (✓) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
None						

SECTION III. PROPERTY INTERESTS AND ASSETS (REAL AND PERSONAL)

List each interest in real or personal property held in a trade or business, for investment, or the production of income which had a fair market value in excess of $1,000 as of the close of the preceding calendar year. Give the fair market value, or a good faith estimate of value as described in the attached information sheet. (If you use the tax assessment method or the price and date of purchase of real property, report actual amounts.) For all other methods report the category of value. If none, so state.

SPOUSE AND DEPENDENT CHILDREN: Report all property interests of a spouse or dependent child. (See the information sheet for exemptions.)

EXCLUSIONS: (1) A personal liability owed to you by a relative; (2) Deposits in personal savings accounts if the total of all accounts is less than $5,000. (If the total amount exceeds $5,000, report all accounts. A personal savings account includes certificates of deposit or any other form of deposit in a bank or any similar institution.); and (3) Personal property not held for business, investment or the production of income. (Examples include household goods, non-interest bearing checking accounts, automobiles, paintings, jewelry, and life insurance policies. However, if an individual is in the business of buying and selling any such items for profit, their category of value must be disclosed.)

Identification of Property (Name and Address) (When identifying real property, describe improvements on land, e.g., ten-story apartment building; when identifying securities, give name of issuing company, if not listed on stock exchange, give address and nature of business)	Valuation Method	Category of Amount or Value (✓)					
		$1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
(15) First National Bank of Chicago	Passbook			✓			
(16) Massachusetts Investors Trust	Sale price, proceeds, 4-79	✓					

SECTION IV. LIABILITIES

List the total liabilities owed to any creditor which exceeded $10,000 at any time during the preceding calendar year. If none, so state. Report only those revolving charge accounts with an outstanding liability exceeding $10,000 as of the close of the preceding calendar year.

SPOUSE AND DEPENDENT CHILDREN: Report liabilities of a spouse and dependent child. (See the information sheet for exemptions.)

EXCLUSIONS: (1) Liabilities owed a relative; (2) A mortgage on the personal residence of you or your spouse; and (3) A loan which is secured by and does not exceed the purchase price of a personal motor vehicle, household furniture or appliance.

Name and Address of Creditor	Type of Liability (e.g. promissory note, margin account) Give interest rate and, if applicable, term.	Category of Amount or Value (✓)				
		$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
None						

SECTION V. PURCHASE, SALE AND EXCHANGE OF PROPERTY

Report any purchase, sale or exchange of real property, stocks, bonds, commodities futures and other forms of securities where the property value exceeds $1,000. If none, so state.

SPOUSE AND DEPENDENT CHILDREN: Report the purchase, sale or exchange of property by a spouse or dependent child. (See the information sheet for exemptions.)

EXCLUSIONS: (1) Transactions involving the personal residence of you or your spouse or dependent children; and (2) Transactions solely between you, your spouse, or dependent children.

Identification of Property (Name and Address) (When identifying real property, describe improvements on land, e.g., ten-story apartment building; when identifying securities, give name of issuing company; if not listed on stock exchange, give address and nature of business)	Type of Property	Type of Transaction	Date (Mo., Day, Yr.)	Category of Amount of Value (✓) $1,001 to $5,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
None		☐ Purchase ☐ Sale ☐ Exchange							
		☐ Purchase ☐ Sale ☐ Exchange							
		☐ Purchase ☐ Sale ☐ Exchange							
		☐ Purchase ☐ Sale ☐ Exchange							
		☐ Purchase ☐ Sale ☐ Exchange							
		☐ Purchase ☐ Sale ☐ Exchange							

SECTION VI. POSITIONS HELD

List positions held, on or before the date of filing during the current calendar year, as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any non profit organization, any labor organization, or any educational or other institution other than the United States Government. If none, so state. **You may exclude positions in religious, social, fraternal, political entities and those solely of an honorary nature.**

FIRST REPORT: If you are filing your first report list positions held during the current calendar year and the two preceding calendar years.
SPOUSE AND DEPENDENT CHILDREN: No report.

Name and Address of Organization	Type of Organization	Position Held	From	To
Jenner & Block, One IBM Plaza, Chicago, IL	Law firm	Partner	1-1-76	7-18-77
Law In American Society Foundation	Not for profit educational organization	Treasurer	1-1-76	8-24-77
Legal Opportunity Scholarship Program	Not for profit educational organization	Director	1-1-76	1977

SECTION VII. COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE

Complete this section ONLY if you are filing your first report. Identify the source and briefly describe the nature of the duties performed or services rendered for any person, other than the Unites States Government, from whom you received compensation in excess of $5,000 in any of the two preceding calendar years. If none, so state. This section does not apply to the President and Vice-President.

EXCLUSIONS: (1) Information to the extent that it is considered confidential as a result of a privileged relationship established by law; and (2) information about persons for whom services were provided by a firm or an association of which you were a member, partner or employee unless you were directly involved in the provision of the services.

SPOUSE AND DEPENDENT CHILDREN: No report.

Source (Name and Address)	Brief Description of Duties
Jenner & Block, One IBM Plaza, Chicago, IL	Partner in law firm during all of 1976 and until July 18, 1977.

SECTION VIII. RELATIONSHIPS WITH OTHER EMPLOYERS

List the date, parties to, and terms of any agreement or arrangement which you have with respect to: future employment, a leave of absence during the period of your Government service, continuation of payments by a former employer other than the United States Government or continuing participation in an employee welfare or benefit plan maintained by a former employer. If none, so state.

SPOUSE AND DEPENDENT CHILDREN: No report.

Date	Parties to Agreement	Terms of Agreement
		(1) I have an interest in the Jenner & Block Retirement Income Plan of $46,922.16 as of December 31, 1978.
(2) 1-1-74	Partners of Jenner & Block	(2) Under the Jenner & Block partnership contract, upon my resignation in 1977 as a partner I became entitled to a severance payment of 50% of my share of the partnership profits for the 12 month period commencing with the mon following the month in which I withdrew, determined on the basis of my percentage of profits at the time of withdrawal, payable in two equal installments, the first during the first year after my withdrawal and the second during the second year after my withdrawal.
		(3) I have no agreement or arrangement with anyone with respect to future employment. After completing government service, I may well request re-admission to the partnership of Jenner & Block, although I have not made any commitment to do so. In the event I should request re-admission to Jenner & Block, the partners of Jenner & Block may well agree to

SECTION IX. ADDITIONAL INFORMATION

	YES	NO
A. Are there any interests in property or liabilities of a spouse or dependent child which you have not reported but which would be reportable, if held by you?		✓
If "yes", do you certify that:		
1. They represent solely your spouse's or dependent child's financial interest or responsibility;		
2. They are not in any way, past or present, derived from your income, assets, or activities;		
3. You neither derive, nor expect to derive, any financial or economic benefit from them; and		
4. You do not have knowledge in detail as to the composition of such interests or liabilities?		

	YES	NO
B. Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?		✓
If "yes", have you reported the income from the trust?		
If "yes", have you reported the assets of the trust?		
If "yes", is this trust an "excepted" trust?		

CERTIFICATION
I CERTIFY that the statements I have made are true, complete and correct to the best of my knowledge and belief.

Signature: Thomas C. Sullivan

Date: June 20, 1979

Office Address: 219 S. Dearborn, Room 1500 S., Chicago, Illinois 60604

Office Telephone Number: (312) 353-5300

REVIEWING OFFICIAL
The information contained in this report discloses no conflict of interest under applicable laws and regulations.

Signature

Date

Office of Government Ethics Use Only

Signature

Date

Comments

I have not included reimbursement which I received in connection with the United States Attorneys conference in Charleston, South Carolina.

I have not included information as to my wife's contingent interest in the trust created in her late father's will, or in certain assets which she holds with her mother; see subparagraph 1, "Spouse and Dependent Children," on page 2 of the information sheet.

I have not included as income the return of my partnership capital account from Jenner & Block.

U.S. GOVERNMENT PRINTING OFFICE : 1978 O - 289-043

Supreme Court, U. S.
FILED
MAR 19 1980
MICHAEL RODAK, JR., CLERK

No. 79-1165

In the Supreme Court of the United States

OCTOBER TERM, 1979

WILLIAM J. SCOTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1165

WILLIAM J. SCOTT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner seeks interlocutory review of an order denying his pretrial motion to disqualify the United States Attorney on the basis of an alleged conflict of interest from representing the government at the petitioner's criminal trial.

The pertinent facts are as follows: Petitioner, the Attorney General of Illinois, was indicted in the Northern District of Illinois on four counts of willfully making and subscribing false individual income tax returns for 1972-1975, in violation of 26 U.S.C. 7206(1). Petitioner moved to dismiss the indictment on the ground that Thomas P. Sullivan, the United States Attorney for the Northern District of Illinois, was not authorized to appear before the grand jury that returned petitioner's indictment; he

thereafter moved to disqualify Mr. Sullivan, because of an alleged conflict of interest under 18 U.S.C. 203, from representing the government at petitioner's trial. The district court denied both motions (Pet. App. A4), and the court of appeals affirmed (Pet. App. A1-A2). The court of appeals denied petitioner's motion to stay the criminal trial (Pet. App. A5), and, on January 8, 1980, Mr. Justice Stevens denied petitioner's application for a stay. Petitioner's trial began on January 8, 1980, and the case was submitted to the jury on March 14, 1980.

Petitioner's sole argument (Pet. 7-12) is that the United States Attorney should be barred from representing the government in this case because of an asserted conflict of interest. Specifically, he contends (Pet. 10-12) that the United States Attorney, in his previous tenure as a partner in a large Chicago law firm, frequently served as counsel in cases in which petitioner, as Illinois Attorney General, was either opposing counsel or an opposing party.

Although the court of appeals treated the denial of petitioner's disqualification motion as a final order and affirmed on the merits, we believe that an order of this sort is functionally indistinguishable from the myriad of interlocutory orders entered in criminal cases that must await review following entry of a final judgment. See *United States* v. *MacDonald*, 435 U.S. 850 (1978). Even if petitioner's claim were ultimately deemed to have merit—and we agree with the court of appeals that it is insubstantial—petitioner will suffer no unique and irremediable injury by being required to present it, along with such other objections he may have, on appeal from a final judgment in the event he is convicted. It is thus not one of that narrow class of claims, such as a double jeopardy claim (see *Abney* v. *United States*, 431 U.S. 651

(1977)), that is so distinct from the trial itself that it is properly deemed a collateral order subject to immediate review.

Moreover, quite apart from appealability, review by this Court at the present time is inappropriate. After more than a two-month trial, the jury is now deliberating the evidence. It would be pointless for this Court to grant review under the circumstances, since it would be many months before a decision could be rendered—a decision that might be wholly unnecessary if petitioner were acquitted or if he were able to secure a reversal of a conviction on some other ground, either of which events would moot his present claim.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

MARCH 1980

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Supreme Court, U. S.
FILED
MAR 28 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1165

WILLIAM J. SCOTT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF.

WILLIAM A. BARNETT,
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The government's memorandum in opposition suggests that the order denying petitioner's motion to disqualify the prosecutor is not an appealable order. (Government br. 2) In both civil and criminal cases, orders ruling on attorney disqualification motions have been held appealable under the collateral order doctrine of *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949). *Silver Chrysler Plymouth Inc.* v. *Chrysler Motors Corp.*, 496 F. 2d 800 (2nd Cir. 1974); *Schloetter* v. *Railoc of Indiana*, 546 F. 2d 706 (7th Cir. 1976); *In the Matter of the Special February Grand Jury*, 581 F. 2d 1262 (7th Cir. 1978); *United States* v. *Dolan*, 570 F. 2d 1177 (3rd Cir. 1978); *United States* v. *Mahan*, 550 F. 2d 1005 (5th Cir. 1977).

The government cites *United States* v. *MacDonald*, 435 U. S. 850 (1978). However, *MacDonald* does not involve a disquali-

fication motion but held that a denial of a motion to dismiss on speedy trial grounds did not meet the criteria of the *Cohen* case. The applicability of *Cohen* to disqualification motions is a matter to be decided on a case by case basis. *Silberling Manufacturing Co.* v. *International Nickel Co., Inc.*, 596 F. 2d 1217 (3rd Cir. 1977).

On March 19, 1980, the jury returned a verdict finding petitioner guilty on count I of the indictment and not guilty on counts II, III, IV and V.

Should this court conclude that there is no jurisdiction because the order denying the motion to disqualify the prosecutor is not an appealable order, the order of this court should so indicate. If the order was not appealable, the Seventh Circuit also lacked jurisdiction so that the order will be reviewable on the appeal from the final judgment entered in this case. Without such an indication from this court, the petitioner may be deprived of his right to review of this crucial order.

Respectfully submitted,

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